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Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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In re:

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METAL STORM, INC.

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Case No. 14-13770-RGM  
(Chapter 7)

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Debtor(s).

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TRUSTEE'S MOTION TO SELL PROPERTY OF THE ESTATE

Kevin R. McCarthy, Trustee, moves the Court for authorization to sell property of the Debtor pursuant to 11 U.S.C. § 363(b) and Federal Rule of Bankruptcy Procedure 6004(a)-(b) on the terms and conditions set forth in his Notice Of Intention To Sell Property Of The Estate filed simultaneously with this Motion, and to take any actions provided therein without further Order of the Court, namely:

TYPE OF SALE: public or private.

PROPERTY FOR SALE: The Trustee will sell the Debtor's weapons inventory and related intellectual property consisting primarily of: two prototype MAUL weapons and one prototype FireStorm weapon;<sup>1</sup> and design data, any assignable contract or license rights,<sup>2</sup>

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<sup>1</sup> The weapons are now being stored at Wegmann USA in Lynchburg, Virginia.

<sup>2</sup> The Debtor as licensee had an intellectual property license agreement with its Australian parent Metal Storm Limited that was to run until February 6, 2016. The Debtor as licensor also had an intellectual property license agreement with Colt Canada. However, because the Trustee did not assume any executory contract within 60 days of the petition date, he believes that any such contracts have been rejected under 11 U.S.C. § 365(d)(1). Nonetheless, under 11 U.S.C. § 365(n) royalties could be payable to the Debtor's assignee in the future by Colt

engineering notebooks, and access rights to the Debtor's Dropbox account holding engineering files and technical data packages for the MAUL and FireStorm products.<sup>3</sup> The sale will be on an as-is, where-is, no-warranty basis, and the title conveyed will be all of the Debtor's interests in the sale assets.<sup>4</sup>

VALUE OF PROPERTY: Debtor's schedules estimate the value of the property as "unknown."

MANNER AND TIME OF SALE: **The sale will occur either by sealed bid public auction or private sale, including use of the internet, at the discretion of N.T. Arrington, to the highest bona fide cash offeror at any time after the later of the following: sale notice published at [www.arringtonauction.com](http://www.arringtonauction.com); 24 days from the date of mailing of this sale notice; and Court approval of the Trustee's Motion.**

APPRAISER, AUCTIONEER, AND SALES AGENT: N.T. Arrington – Auctioneer, Post Office Box 738, Gainesville, Virginia, 20156. Phone: (703) 255-4695; fax: (703) 754-9621; e-mail: nta1153@verizon.net.

COMPENSATION TO SALES AGENT: 10% of gross sale proceeds plus advertising costs and other reasonable sale-related expenses, including storage charges for the weapons being held by Wegmann USA.

LIENS: none known.

DEBTOR'S EXEMPTIONS: n/a.

TAX CONSEQUENCES TO ESTATE BY SALE: none or minimal.

NET PROCEEDS TO ESTATE: cannot be estimated at this time.

OTHER: The Trustee will be authorized to provide buyers with bills of sale and to abandon in place any property not sold or cause it to be destroyed at estate expense.

APPLICABILITY OF 11 USC § 363(m) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004(h). Entry of an Order granting the Trustee's Motion will constitute a Court determination that the buyers are good faith purchasers and that the Order be immediately effective.

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Canada.

<sup>3</sup> Any interested bidder may review the contents of the Debtor's Dropbox account by making arrangements with the Trustee to access the account over the internet. These arrangements will include proof of U.S. citizenship, entry into a non-disclosure agreement, and a meeting at the Trustee's office with the Debtor's principal Peter Faulkner who will exhibit the contents of the account.

<sup>4</sup> The Debtor's parent company, Metal Storm Limited ("MSL"), is in its own liquidation proceeding in Australia. On February 27, 2015 the Trustee received a letter from the Receiver of MSL objecting to the sale of assets of the Debtor based on his concern that assets of MSL were being included. After consulting with the Debtor's president, the Trustee has concluded that the proposed sale does not include any assets of MSL. In the interest of clarity, however, the Trustee reserves the right to alter the proposed sale assets based on further communication with the Receiver of MSL.

Wherefore, the Trustee requests the Court to enter the attached proposed Order.

Respectfully submitted,

/s/ Kevin R. McCarthy  
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#### CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of February, 2015 I served a copy of the foregoing, including the attached proposed Order, through the court's ecf system on all registered ecf participants who have appeared in this case and mailed a copy of the foregoing, by first class mail, postage prepaid, to the following:

Aaron Lucan, Receiver  
Metal Storm Limited  
Suite 3, Level 3  
350 George Street  
Sydney, Australia NSW 2000

/s/ Kevin R. McCarthy  
Kevin R. McCarthy